



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward Abraham, President
Liquid Fence Co., Inc.
RT. 534 & Chippewa Road
P.O. Box 300
Brodheadville, PA 18322

JUL 16 2013

RE: Notice of Warning - Case No.: F-13-012

Dear Mr. Abraham:

This Notice of Warning is issued pursuant to Section 9(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136g(c)(3).

The United States Environmental Protection Agency ("EPA" or "Agency") is taking this action based on copies of labeling and technical data information obtained for the following product:

"Liquid Fence Deer & Rabbit Repellent"

Pursuant to FIFRA § 2(u), 7 U.S.C. § 136(u), and 40 CFR § 152.3(s), the term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Under FIFRA § 3 (a), 7 U.S.C. § 136a (a), no person in any state may distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA. Except in very limited circumstances, any substance falling within the definition of a pesticide must be registered by EPA before it can legally be sold or distributed. One such exemption to the registration requirement applies to pesticides that the Administrator, has determined "to be of a character which is unnecessary to be subject to this Act", pursuant to Section 25(b) of FIFRA. To qualify as a Section 25(b) or minimum risk pesticide, products must meet a series of exemption conditions described in 40 CFR § 152.25(f).

(The appendixes found under 40 CFR 152.25(f) are listed in Pesticide Registration Notice #2000-6 which has been included for your reference. You may also go to the U.S. EPA Pesticide Registration (PR) Notices website (http://www.epa.gov/PR_Notices/) to view this PR Notice and other similar documents online.)

Under 40 CFR § 152.25(f)(3)(iii), pursuant to section 2(q)(1)(A) of the Act, a minimum risk pesticide is misbranded if its labeling is false or misleading, including those listed in 40 CFR 156.10(a)(5)(i) through (viii). Examples of statements or representations in the labeling which constitute misbranding include but are not limited to the following:

- ▶ A false or misleading statement concerning the composition of the product;
- ▶ A false or misleading statement concerning the effectiveness of the product as a pesticide or device;
- ▶ A false or misleading statement about the value of the product for purposes other than as a pesticide or device;
- ▶ A false or misleading comparison with other pesticides or devices;
- ▶ Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government;
- ▶ The name of a pesticide which contains two or more principal active ingredients if the name suggests one or more, but not all such principal active ingredients, even though the names of the other ingredients are stated elsewhere in the labeling;
- ▶ A true statement used in such a way as to give a false or misleading impression to the purchaser;
- ▶ Label disclaimers which negate or detract from labeling statements required under the act and these regulations, including as conditions of exemption.

Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is "misbranded" if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide that is considered to be misbranded under this Act.

On the product labeling and technical information data sheets obtained for "Liquid Fence Deer & Rabbit Repellent", the following statements are found:

- ▶ "(For) use on edible crops";
- ▶ "EPA exempt";
- ▶ "...ideal for....commercial farms...";
- ▶ "...all ingredients are on the EPA's FIFRA 25(b) list of minimum risk ingredients";
- ▶ "EPA registration exempt"

The use of the statements "*EPA exempt*", "*all ingredients are on the EPA's FIFRA 25(b) list of minimum risk ingredients*" and "*EPA registration exempt*" imply direct or indirect endorsement or recommendation by EPA of a product that has not been reviewed by the Agency and is therefore considered to be false or misleading. The use of the statements "*(For) use on edible crops*" and "*ideal for....commercial farms*" imply ingredients in this product have allowed food tolerances or are exempted from having food tolerances as established and regulated under Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). Pesticide labels may bear only those food use claims for which EPA has established tolerances or exemptions from tolerances for both the active and inactive ingredients. As such, the statements "*(For) use on edible crops*" and "*ideal for....commercial farms*" are considered to be false or misleading statements as "Liquid Fence Deer & Rabbit Repellent" has not been reviewed by the Agency. Therefore, the distribution or sale of "Liquid Fence Deer & Rabbit Repellent" with the above mentioned false or misleading statements constitute misbranding and is considered to be an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), thereby disqualifying "Liquid Fence Deer & Rabbit Repellent" from exemption to FIFRA pesticide registration requirements.

To bring your company into compliance, you will need to make the necessary changes to the labeling of the products to bring them into compliance with the requirements of section 25(b) of FIFRA and applicable regulations, and ensure all advertising/promotional/technical materials are compliant with FIFRA.

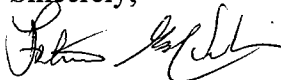
Failure to bring your product into compliance may subject you and your customers to further enforcement action under FIFRA § 14 which provides for civil and criminal penalties for violations of FIFRA.

Within twenty-one (21) days of receipt of this Notice, please provide EPA with a written response outlining what steps you have taken or will take to achieve compliance with FIFRA. Questions and correspondence relating to this matter should be directed to:

Kyla L. Townsend McIntyre
Pesticides & Asbestos Programs Branch (3LC62)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2045

EPA has determined that your company may be a "small business" under the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). Please see the enclosure to this letter which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, does not create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

Sincerely,



Fatima El-Abdaoui, Ph.D, Chief
Pesticides & Asbestos Programs Branch

Enclosures: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA);
Pesticides Regulations Notice 2000-6: Minimum Risk Pesticides Exempted under FIFRA
Section 25(b) Clarification of Issues

cc: J. Uram, PDA
A. Reddy, EPA Region 2

